

BEFORE THE BOARD OF OPTOMETRY
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed amendment)	NOTICE OF PUBLIC HEARING
of ARM 24.168.301 definitions,)	ON PROPOSED AMENDMENT,
24.168.401, 24.168.402, 24.168.408,)	ADOPTION, AND REPEAL
and 24.168.411 general provisions,)	
24.168.711 diagnostic permissible drugs,)	
24.168.901, 24.168.911)	
therapeutic pharmaceutical agents,)	
24.168.2101 and 24.168.2104, continuing)	
education, 24.168.2307 screening panel,)	
the proposed adoption of NEW RULE I)	
fee abatement, and the proposed)	
repeal of 24.168.405 examinations,)	
24.168.701 approved courses and)	
examinations, 24.168.704 new licensees,)	
24.168.904 applicants for licensure,)	
24.168.907 therapeutic pharmaceutical)	
agents, and 24.168.2304 complaint)	
procedure)	

TO: All Concerned Persons

1. On November 20, 2006, at 9:00 a.m., a public hearing will be held in room 489, 301 South Park Avenue, Helena, Montana to consider the proposed amendment, adoption, and repeal of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Optometry (board) no later than 5:00 p.m., on November 15, 2006, to advise us of the nature of the accommodation that you need. Please contact Sharon McCullough, Board of Optometry, 301 South Park, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2390; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdopt@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: As part of the board's ongoing rule review process, the board determined it is reasonable and necessary to generally update its rules and therefore is proposing a substantial number of revisions. Some of the proposed amendments are technical in nature, such as substituting modern language for archaic phrasing and gender neutral for gender specific terms, amending rule catchphrases for accuracy, reorganizing and renumbering within rules for easier reference and following amendment, and updating obsolete or inappropriate statutory references. Grammatical corrections

are proposed where necessary to comply with ARM rule formatting requirements. Other rule changes reflect a decision by the board to attempt to combine and streamline its rules. To affect this, the board is proposing the rewording of several rules to incorporate pertinent licensure application provisions into fewer, but clearer and better organized rules. Repeal of certain existing rules is proposed as the significant provisions will be incorporated into the reworked rules, making them redundant and unnecessary. Accordingly, the board believes that there is reasonable necessity to generally amend certain existing rules, repeal certain existing rules, and adopt one new rule at this time. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule. Additionally, the board has determined it is reasonably necessary to amend authority and implementation cites to accurately reflect all statutes implemented through the rules, to provide the complete sources of the board's rulemaking authority, and to delete references to repealed or erroneous statutes.

The 2005 Montana Legislature enacted Chapter 467, Laws of 2005 (House Bill 182), an act generally revising and consolidating professional and occupational licensing laws and distinguishing duties regarding licensure, examination, and fees between the department and the particular boards or programs. The bill was signed by the Governor on April 28, 2005, and became effective on July 1, 2005. It is reasonable and necessary to amend the board's rules throughout to maintain compliance with the statutory changes, avoid duplication with the recently adopted department rules and to further the intent of the 2005 legislation.

4. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

24.168.301 ANTERIOR SEGMENT DEFINED DEFINITIONS For the purposes of this chapter, the following definitions apply:

(1) "ACOE" means the Accreditation Council on Optometry Education of the American Optometric Association.

(2) "ARBO" means the Association of Regulatory Boards of Optometry.

~~(1)(3) For the purpose of the Optometry Act, the anterior "Anterior segment of the eye" is defined as~~ means that part of the eye anterior to the vitreous face.

(4) "Board" means the Board of Optometry as defined in 2-15-1736, MCA.

(5) "Department" means the Department of Labor and Industry as defined in 2-15-1701, MCA.

(6) "DPA" means certification by the board in diagnostic pharmaceutical agents.

(7) "NBEO" means the National Board of Examiners in Optometry.

(8) "TMOD" means the Treatment and Management of Ocular Disease multiple choice examination administered by NBEO.

(9) "TPA" means certification by the board in therapeutic pharmaceutical agents.

AUTH: 37-10-202, MCA

IMP: 37-10-101, 37-10-103, 37-10-304, MCA

REASON: The board determined it is reasonably necessary and will increase clarity and ease of use by amending this rule to consolidate and define several relevant acronyms that are used throughout the board's rules.

24.168.401 FEE SCHEDULE

(1) and (2) remain the same.

(3) ~~Out-of-state license~~ Endorsement application 300

(4) and (5) remain the same.

AUTH: 37-1-131, 37-1-134, 37-10-202, MCA

IMP: 37-1-134, 37-1-141, 37-1-304, 37-10-302, MCA

24.168.402 APPLICATION FOR LICENSURE BY EXAMINATION (1) ~~All candidates for examination shall file the appropriate application with the national board of examiners in optometry along with the proper fees as required by the national board of examiners in optometry. All applicants for licensure by examination shall submit a completed application.~~

(2) The application material must include the following:

(a) verification of successful passage of all parts of the national optometry examination administered by the NBEO with scores sent directly from the examination agency;

(b) verification of passage of the TMOD examination;

(c) verification of graduation with a transcript sent directly from the college, university, or institution approved by the ACOE, and recognized by ARBO, in which the practice and science of optometry is taught;

(d) license verifications from all states where a licensee has held or holds a license;

(e) three affidavits from individuals not related to the applicant attesting to the good moral character of the applicant; and

(f) the appropriate fee.

(3) Applicants shall read and understand the statutes and rules of the board for compliance with their profession.

(a) Proof of an applicant's familiarity with the board statutes and rules is evidenced by attestation on the application.

AUTH: 37-1-131, 37-10-202, MCA

IMP: 37-1-131, 37-10-301, 37-10-302, MCA

24.168.408 LICENSURE BY ENDORSEMENT OF OUT-OF-STATE APPLICANTS (1) ~~A license to practice optometry in the state of Montana may be issued at the discretion of the board provided the applicant completes and files with the board an application for licensure and the required application fee. The candidate must meet the following requirements:~~

~~(a) the candidate holds a current, valid and unrestricted license to practice optometry in another state or jurisdiction, which was issued under standards equivalent to or greater than current standards in this state. Official written~~

verification of such licensure status must be received by the board directly from the other state(s) or jurisdiction(s);

~~(b) the candidate shall supply a copy of the certified transcript sent directly from a college, university or institution approved by the board, including schools of optometry accredited by the association of regulatory boards of optometry (ARBO), in which the practice and science of optometry is taught in a course of study covering eight semesters or four years of actual attendance;~~

~~(c) the candidate shall supply proof of successful completion of all parts of the national examination offered by the national board of examiners in optometry (NBEO) with a passing score. Candidate scores on the examination must be forwarded by the exam agency directly to the board;~~

~~(d) candidates who were licensed prior to the availability of all parts of the NBEO examination (1993) shall supply proof of successful completion of a qualifications examination (acceptable to the board) administered by the licensing authority of the state or jurisdiction granting the license, and shall meet qualifications to be therapeutically qualified;~~

~~(e) the candidate shall read Montana statutes and rules of the board and sign a disclaimer verifying completion of this review; and~~

~~(f) the candidate shall supply a copy of the laws and rules from the state of licensure, which were in effect at the time the license was granted in the other state.~~

(1) All applicants for licensure by endorsement shall submit a completed application.

(2) The application shall include the following:

(a) verification of successful passage of all parts of the national optometry examination administered by the NBEO with scores sent directly from the examination agency;

(b) verification of passage of the TMOD examination;

(c) verification of graduation with a transcript sent directly from the college, university, or institution approved by the ACOE, and recognized by ARBO, in which the practice and science of optometry is taught;

(d) license verifications from all states where a licensee has held or holds a license;

(e) three affidavits from individuals not related to the applicant attesting to the good moral character of the applicant;

(f) any other information the board may require; and

(g) the appropriate fee.

(3) Applicants not meeting the qualifications of (2)(a), (b), or (c) shall be reviewed by the board on a case-by-case basis.

(4) If an applicant was licensed prior to the inclusion of TMOD in the NBEO examination (1993), the applicant shall:

(a) provide proof of successful completion of a qualifying examination, or examinations, as defined in 37-10-304, MCA, administered by the licensing authority of the state or jurisdiction granting the license; and

(b) meet all qualifications to be TPA and DPA certified.

(5) Applicants shall read and understand the statutes and rules of the board for compliance with their profession.

(a) Proof of an applicant's familiarity with the board statutes and rules is evidenced by attestation on the application.

AUTH: 37-1-131, 37-10-202, MCA

IMP: 37-1-304, MCA

24.168.411 GENERAL PRACTICE REQUIREMENTS (1) through (1)(a)(ii) remain the same.

(iii) a professional limited liability company, pursuant to 35-8-1301, et seq., MCA, in which all managers or shareholders are licensed to practice optometry or medicine; or

(iv) a trust in which both the trustor and any trustees are licensed to practice optometry or medicine; and

(b) all professional signs and advertising, etc., must include the optometrist's name and the title "~~Optometrists~~ Optometrist", "Doctor of Optometry", or initials "O.D." ~~in connection therewith;~~

~~(c)(2) the~~ The board will consider all advertising appearing over the signature of an individual as having been inserted and approved by that individual, and will hold the individual responsible for such advertising. If advertising appears over the signature of a company, firm, or corporation, all the individual officers or partners of the organization will be considered individually responsible for such advertising.

~~(2)(3) Each registered licensed~~ Each registered licensed optometrist must file and have on record with the board annually, the location of each and every office wherein the practice of optometry is conducted by ~~him or her~~ the licensed optometrist.

~~(3)(4) Each registered licensed~~ Each registered licensed optometrist must maintain accurate patient records for not less than five years from the last time the patient was treated.

AUTH: 37-1-131, 37-10-202, MCA

IMP: 37-10-301, MCA

24.168.711 OPHTHOMOLOGICAL DIAGNOSTIC PERMISSIBLE DRUGS

(1) remains the same.

(a) Mydriatics;

~~(i) Phenylephrine hydrochloride~~

~~(ii) Hydroxyamphetamine hydrobromide~~

(b) Cycloplegics;

~~(i) Tropicamide~~

~~(ii) Cyclopentolate~~

~~(iii) Homatropine hydrobromide~~

~~(iv) Atropine sulfate~~

(c) Topical anesthetics; and

~~(i) Proparacaine hydrochloride~~

~~(ii) Benoxinate hydrochloride~~

~~(iii) Piperocaine hydrochloride~~

(d) Miotic, only in the event of an emergency and after consultation with physician.

~~(i) Pilocarpine hydrochloride~~

AUTH: 37-1-131, 37-10-202, MCA
IMP: 37-10-101, 37-10-103, 37-10-304, MCA

REASON: The board has determined it is reasonable and necessary to amend the rule deleting the specific listing of permissible diagnostic drugs and instead designating the permissible drugs by category. This amendment will allow for licensees' use of permissible new drugs within the allowed categories as the drugs are developed and without requiring the board's continuous amendment of the rule.

24.168.901 APPROVED TPA COURSE AND EXAMINATION (1) An approved course, as referred to in 37-10-304(2)(a)(ii), MCA, shall ~~be a therapeutic pharmaceutical agents course approved by the board which consists~~ consist of a minimum of 100 hours of didactic classroom instruction and clinical instruction.

~~(a) The test for competency will be given either by the staff conducting the course, or the ARBO. The ARBO exam referred to in this rule is the exam on ocular therapeutics. A passing score will be an average of 75% or higher on all subjects tested.~~

AUTH: 37-1-131, 37-10-202, MCA
IMP: 37-10-304, MCA

REASON: Due to ongoing inquiries by licensees, it is reasonable and necessary to amend this rule to clarify the process for current licensees to obtain a TPA or DPA certification after licensure.

24.168.911 APPROVED OCCULAR THERAPEUTIC APPROVED DRUGS

(1) and (1)(a) remain the same.

- (i) ~~anti-biotic~~ antibiotic;
- (ii) ~~anti-viral~~ antiviral;
- (iii) ~~anti-fungal~~ antifungal; and
- (iv) ~~anti-parasitic~~ antiparasitic;
- (b) ~~auto-immune~~ autoimmune agents, including:
 - (i) ~~anti-allergy~~ antiallergy;
 - (ii) ~~anti-histamines~~ antihistamines;
 - (iii) remains the same.
 - (iv) mast cell stabilizers; and
 - (v) ~~anti-anaphylaxis~~ antianaphylaxis;
- (c) and (d) remain the same.
- (e) ~~anti-glaucoma~~ antiglaucoma agents;
- (f) remains the same.
- (g) autonomic agents; and
- (h) remains the same.

AUTH: 37-1-131, 37-10-202, MCA
IMP: 37-10-101, 37-10-103, 37-10-304, MCA

24.168.2101 CONTINUING EDUCATION REQUIREMENTS (1) Each licensed optometrist shall ~~obtain a minimum of be required to attend~~ not less than 36 hours ~~of continuing education every two years biennially of in~~ scientific clinics, forums, or optometric educational studies ~~as may be provided or approved by the board of optometry as a prerequisite for his/her license renewal. Continuing education will be reported every two years on the renewal form commencing with the 1999 renewal form. The board will accept:~~

(a) ~~A copy of this act shall be sent to each licensee by the board prior to the license renewal date each year.~~

(b) ~~For the purpose of implementation of the continuing education act, the term "annually" shall refer to the fiscal year July 1 through June 30.~~

(2) (a) ~~The board will accept up to four hours of practice management continuing education credit every two years; and~~

(3) (b) ~~Twelve twelve~~ hours of credit for approved continuing education correspondence courses or approved Internet courses ~~will be allowed biennially every two years.~~

(4) ~~The continuing education requirement is waived for the reporting period during which:~~

(a) ~~the person graduates from an accredited school of optometry and then promptly becomes a licensee; or~~

(b) ~~the licensee completes a residency program accredited by the Accreditation Council on Optometric Education of the American Optometric Association.~~

(2) A person who graduates from an accredited school of optometry and becomes a licensee within one year of graduation is excused from the continuing education requirement during the first year the person is a licensee.

(3) A licensee who is enrolled in a residency program accredited by the ACOE is excused from the continuing education requirement while the licensee is in the residency program and for the year in which the licensee successfully completed the residency program.

(5) (4) The board may conduct randomly select random audits of 20 percent of all renewed licensees report forms for audit and verification. It will be is the responsibility of each optometrist to maintain his or her the optometrist's own records of participation and completion, and make them available upon request.

(a) Random audits will be conducted in odd-numbered years.

AUTH: 37-1-319, 37-10-202, MCA

IMP: 37-1-306, MCA

REASON: The board has determined it is reasonable and necessary to amend this rule to clarify for licensees that the board now randomly audits 20 percent of all licensees' continuing education (CE) during every two-year renewal period.

24.168.2104 APPROVED PROGRAMS OR COURSES (1) ~~The type of educational~~ Educational programs approved by the board shall be ~~those~~ affiliated with national, regional, or state optometric associations, academies, colleges of

optometry or approved by the Association of Regulatory Boards of Optometry's ARBO's Council on Optometric Practitioner Education (COPE).

(a) Any other continuing education course(s) not covered ~~above~~ in (1) must be submitted by the licensee and have prior approval by the board ~~to qualify~~. Any course not submitted to the board and approved prior to attendance ~~will~~ shall not be allowed for credit. The course program/ or syllabus, and information on the credentials and qualifications of the course presenter must accompany the application approval form.

~~(2) In-office training or privately sponsored education programs, however, are not generally acceptable.~~

~~(3) (2) Continuing education courses offered and completed on the Internet or via other similar electronic means may be accepted, if all criteria listed below are met~~ must comply with all the requirements in (1).

~~(a) internet courses must be sponsored by a college or school of optometry;~~

~~(b) internet courses must provide a certificate of completion; and~~

~~(c) internet courses must comply with all other continuing education requirements, including (1) above.~~

AUTH: 37-1-131, 37-1-319, 37-10-202, MCA

IMP: 37-1-131, 37-1-306, MCA

24.168.2307 SCREENING PANEL (1) The board screening panel shall consist of at least two board members including the optometrist board member who has served longest on the board, and the public member of the board. The ~~chairman~~ chairperson may reappoint screening panel members, or replace screening panel members as necessary at the ~~chairman's~~ chairperson's discretion.

(2) The screening panel shall not review anonymous complaints.

AUTH: 37-10-202, MCA

IMP: 37-1-307, MCA

REASON: The board determined it is reasonable and necessary to incorporate into this rule the language regarding anonymous complaints that was formerly in ARM 24.168.2304 which is proposed to be repealed in this notice.

5. The proposed new rule provides as follows:

NEW RULE I FEE ABATEMENT (1) The Board of Optometry adopts and incorporates by reference the fee abatement rule of the Department of Labor and Industry found at ARM 24.101.301.

AUTH: 37-1-131, MCA

IMP: 17-2-302, 17-2-303, 37-1-134, MCA

REASON: The board has determined there is reasonable necessity to adopt and incorporate by reference ARM 24.101.301 to allow the board to authorize the department to perform renewal licensure fee abatements as appropriate and when

needed, without further vote or action by the board. The department adopted ARM 24.101.301 to implement a means for the prompt elimination of excess cash accumulations in the licensing programs operated by the department.

Adoption and incorporation of ARM 24.101.301 will allow the department to promptly eliminate excess cash balances of the board that result from unexpectedly high licensing levels or other nontypical events. Abatement in such instances will allow the licensees who have paid fees into the board's program to receive the temporary relief provided by abatement. Adoption of this abatement rule does not relieve the board from its duty to use proper rulemaking procedures to adjust the board's fee structure in the event of recurrent instances of cash balances in excess of the statutorily allowed amount.

6. The rules proposed to be repealed are as follows:

24.168.405 EXAMINATIONS found at ARM page 24-18032.

AUTH: 37-10-202, MCA

IMP: 37-10-201, 37-10-302, MCA

24.168.701 APPROVED COURSES AND EXAMINATIONS found at ARM page 24-18077.

AUTH: 37-10-202, MCA

IMP: 37-10-304, MCA

24.168.704 NEW LICENSEES found at ARM page 24-18077.

AUTH: 37-10-202, MCA

IMP: 37-10-304, MCA

24.168.904 APPLICANTS FOR LICENSURE found at ARM page 24-18091.

AUTH: 37-10-202, MCA

IMP: 37-10-304, MCA

24.168.907 THERAPEUTIC PHARMACEUTICAL AGENTS found at ARM page 24-18091.

AUTH: 37-1-131, 37-1-319, 37-10-202, MCA

IMP: 37-1-131, 37-10-103, MCA

24.168.2304 COMPLAINT PROCEDURE found at ARM page 24-18265.

AUTH: 37-10-202, MCA

IMP: 37-1-308, 37-1-309, MCA

REASON: The board has determined it is reasonably necessary to repeal this rule as the information is currently in statute in Title 37, chapter 1, part 3, MCA, and does not need to be repeated in rule.

7. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Optometry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdopt@mt.gov, and must be received no later than 5:00 p.m., November 28, 2006.

8. An electronic copy of this Notice of Public Hearing is available through the department and board's site on the World Wide Web at www.optometry.mt.gov. The department strives to make the electronic copy of this Notice conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

9. The Board of Optometry maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Board of Optometry administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Board of Optometry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to dlibsdopt@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

10. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled.

11. Darcee L. Moe, attorney, has been designated to preside over and conduct this hearing.

BOARD OF OPTOMETRY
DOUGLAS MCBRIDE, O.D., PRESIDENT

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State October 16, 2006